

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 26 2004

Applicant(s): Wheeler

Application No.: 09/875,805

Filed: 6/5/2001

Title: Method for Preventing Aggregation of
a Lipid:Nucleic Acid Complex

Attorney Docket No.: INEX.P-010

Customer No.: 021121

Group Art Unit: 1635

Examiner: Epps Ford, J.L.

Confirmation No: 5995

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Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

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OPE/JCVSRESPONSE TO OFFICIAL ACTION

Dear Sir:

This is in response to the Office Action mailed February 26, 2004 for the above-captioned application. Reconsideration and further examination are respectfully requested.

The Examiner rejected claims 1-14 for obviousness-type double patenting over US patent No. 5,976,567. In response, Applicants enclose a Terminal Disclaimer and the appropriate fee. Thus, this rejection is believed to be overcome.

I hereby certify that this paper and any attachments named herein are transmitted to the United States Patent and Trademark Office, Fax number: 703-872-9306 on May 26, 2004.

Marina T. Larson
Marina T. Larson, PTO Reg. No. 32,038

May 26, 2004
Date of Signature

Appln No.: 09/875,805
Amendment Dated: May 26, 2004
Reply to Office Action of February 26, 2004

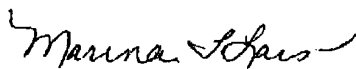
Claims 1-14 stand rejected under 35 USC § 112, second paragraph as being incomplete, and under 35 USC § 112, first paragraph, as lacking enablement. The rationale for both of these rejections is the same, and Applicants will therefore address them together.

The Examiner contends that the passage on Page 27, third paragraph, indicates that the presence of detergent is required in the first step of claim 1 to obtain results. Based on this, she argues that the claims omit a necessary step (2nd ¶ rejection) and encompass subject matter that is inoperative (1st ¶ rejection). Applicants respectfully disagree.

The application disclose two methods of making the lipid particles, namely detergent dialysis and a modification of a reverse-phase method. (page 27, lines 17-19). The claims of this application are intended to encompass both methods. The statement on which the Examiner relies refers to only the detergent dialysis method. The description of the second method appears on Page 30, the final partial paragraph, and the pages following, and on Page 60. This description does not include any indication that detergent is used, let alone necessary. Accordingly, Applicants respectfully submit that the rejections under 35 USC § 112 are in error and should be withdrawn.

In view of the foregoing, Applicants believe that this application is now in form for allowance. Favorable reconsideration and allowance of all claims are respectfully urged.

Respectfully submitted,



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Enclosure: Terminal Disclaimer
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